

1 ANDREW P. BRIDGES (CSB No. 122761)
abridges@fenwick.com
2 JENNIFER L. KELLY (CSB No. 193416)
jkelly@fenwick.com
3 KATHLEEN LU (CSB No. 267032)
klu@fenwick.com
4 FENWICK & WEST LLP
555 California Street, 12th Floor
5 San Francisco, CA 94104
Telephone: 415.875.2300
6 Facsimile: 415.281.1350

7 Attorneys for Defendants
GIGANEWS, INC., and
8 LIVEWIRE SERVICES, INC.

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION
12

13 PERFECT 10, INC., a California
corporation,

14 Plaintiff,

15 v.

16 GIGANEWS, INC., a Texas Corporation;
17 LIVEWIRE SERVICES, INC., a Nevada
18 corporation; and DOES 1 through 100,
inclusive,

19 Defendants.
20

Case No.: 11-cv-07098-ABC (SHx)

**APRIL 19, 2013 DECLARATION
OF RONALD B. YOKUBAITIS IN
SUPPORT OF DEFENDANTS'
MOTION TO DISMISS
AMENDED COMPLAINT**

Date: June 17, 2013
Time: 10:00 a.m.
Dept: Courtroom 680
Judge: Hon. Audrey B. Collins

21 I, Ronald B. Yokubaitis, declare as follows:

22 1. I am Giganews's agent designated to receive notification of claimed
23 infringement pursuant to Section 512(c) of the Copyright Act. 17 U.S.C. § 512(c).
24 I have been Giganews's designated agent at all times relevant to this case. As
25 Giganews's designated agent, I have personal knowledge of Giganews's policies,
26 procedures, and processes regarding notifications of claimed infringement. I have
27 reviewed Perfect 10's Amended Complaint in this action (Dkt. 101). I have
28

1 personal knowledge of the facts I state in this declaration, and if called to testify to
2 them could do so competently.

3 2. Attached as Exhibit A to this declaration is a true and correct copy of a
4 letter, dated March 25, 2009, that Giganews received from Norm Zada of Perfect
5 10, Inc. That letter included a DVD. Perfect 10's letter did not identify any
6 particular infringing Usenet postings and claimed that the DVD contained a
7 "sampling of our copyrighted materials." I previously attached a true and correct
8 copy of the DVD that accompanied the March 25, 2009 letter as Exhibit B to my
9 June 22, 2011 Declaration in Support of Defendants' Rule 12(b)(6) Motion to
10 Dismiss. My June 22, 2011 Declaration was filed as Docket No. 11-3, and a copy
11 of that DVD was lodged with the Court on July 14, 2011 pursuant to the Southern
12 District of California's June 30, 2011 Order (Dkt. 15). To the best of my
13 understanding, this is the March 25, 2009 "notice" the Amended Complaint refers
14 to in paragraph 45.

15 3. Attached as Exhibit B to this declaration is a true and correct copy of a
16 letter, dated April 7, 2009, that I, as Giganews's designated agent under Section
17 512(c) of the Copyright Act, sent to Norm Zada of Perfect 10, Inc. It states: "Each
18 and every article posted to a Usenet server has its own unique Message ID. We
19 cannot locate any article without the Message ID and therefore Giganews will need
20 the full headers and/or Message-Ids to find the specific infringing material and
21 remove it." In that letter, I asked Perfect 10 to "[p]lease, help us, to help you,
22 protect you or your members' copyrights, by always sending electronically the
23 articles' headers and Message-IDs." To the best of my understanding, Exhibit B is
24 the response "Giganews wrote back" that the Amended Complaint refers to in
25 paragraph 45.

26 4. Between June 28, 2011 and August 17, 2011, Giganews received 43
27 defective DMCA notices from Norm Zada of Perfect 10, Inc. Attached as Exhibits
28

1 C to PP to this declaration are true and correct copies of those defective DMCA
2 notices. Due to differences in time zones, I include as exhibits four notices sent
3 between midnight and 1:00 a.m. Central time on August 18, 2011 (between 11:00
4 p.m. and midnight Pacific time on August 17, 2011). To the best of my knowledge,
5 Exhibits C to PP are the “notices” Perfect 10 sent “[b]etween June 28, 2011 and
6 August 17, 2011” that the Amended Complaint refers to in paragraph 46. The first
7 page of each exhibit is a true and correct copy of the email attaching each “notice.”
8 Mr. Zada sent each of these emails to dmca2008@giganews.com, Giganews’s
9 designated email address under the DMCA. None identify any unique Message
10 IDs. Only the notices from April 6, 2011 to April 18, 2011 (Exhibits HH-PP)
11 contain language stating “all of the images that appear as a result of that search are
12 copyrighted by Perfect 10” (though some of the notices also contained an errant
13 comma after the word “search”).

14 I declare under penalty of perjury under the laws of the United States that the
15 foregoing is true and correct and that this declaration was executed on April 19,
16 2013, in Austin, Texas.



Ronald B. Yokubaitis